

LANDSCAPE MAINTENANCE SERVICES AGREEMENT

THIS AGREEMENT is made and entered into on this ____ day of _____, 2004, by and between Northridge Heights Partners, LLP; Northridge Partners IV, LLP; Northridge Partners VI, LLP; ("Owner"), and the City of Lincoln, Nebraska, a municipal corporation of the State of Nebraska ("City").

RECITALS

I.

Owner is the owner of the real property abutting Fletcher Avenue between North 28th Street and Ridge Park Drive ("Property"). The Property is more particularly described on Attachment "A" which is attached hereto and incorporated herein by reference.

II.

The Owner has requested the City to allow for more landscaping to be planted in the three medians in Fletcher Avenue between North 28th and Ridge Park Drive abutting the Property as shown on Attachment "B", attached hereto and incorporated herein by this reference.

III.

The City is willing to approve Owner's request provided Owner enters into an Agreement with the City regarding the planting of the landscaping, guarantee of the plantings during the establishment period, and for the permanent and continuous maintenance thereafter.

IV.

The Owner is willing to install and maintain the plantings provided the City makes a contribution to Owner toward the cost of preparation of the plan and installation of the

landscaping in an amount equal to the amount of money the City would have paid to design and install a prototypical landscape scheme for said medians.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereto agree as follows:

1. Owner's Duties

The Owner agrees at Owner's own cost and expense to:

(a) Prepare and submit a landscape plan from the City's list of approved plant materials for landscaping the median areas in Fletcher Avenue to the Directors of Parks and Recreation and Public Works and Utilities for their review and approval. The landscape plans shall include a program for maintenance (including the means by which proper watering will be provided) and replacement of trees and plant materials. The installation of an underground irrigation system, wholly or partially in the public right-of-way, shall be subject to the requirements of Lincoln Municipal Code §24.12.450.

(b) Obtain approved plant material from established commercial licensed nursery growers. Approved plant material shall be installed by licensed nursery and/or landscape contractors in accordance with the City of Lincoln Design Standards and subject to inspection and approval by the Director of Parks and Recreation. All landscaping shall be installed within two planting seasons following completion of the construction of Fletcher Avenue and shall be guaranteed during the establishment period. The establishment period will follow the completion of all planting in the medians in a planting season and shall extend for a period of two years. Upon completion of the establishment period, the City Arborist will make an inspection of the plant material for acceptability. After the final inspection has been made, the Owner will be notified in writing of the quantities of the plant material that shall be replaced

and when. Plant replacement shall be at Owner's expense. The Owner's responsibility for all such replacements shall extend for 150 days after such time that the last plant to be replaced is properly planted and accepted by the City Arborist. The spring planting season shall be from March 1 to May 30 for all deciduous material and from March 1 to May 15 for all coniferous material. The fall planting season shall be from October 1 to December 1 for deciduous material and from September 15 to November 15 for coniferous material. Planting operations shall be performed during these seasons only except when prior written permission is obtained from the City Arborist.

(c) Perform all maintenance work in a professional and workmanlike manner using quality equipment, methods, and materials. Maintenance of newly planted areas shall begin immediately and shall continue on a permanent basis.

(d) Provide all plantings with a thorough and proper watering immediately after planting.

(e) Maintain all areas free of persistent erosion. Anti-erosion measures will be taken where potential problems exist. Any erosion that does happen will be cleaned up and cuts will be filled back.

(f) Protect and provide approved plants and plantings with adequate growing care, conditions, and space.

(g) Remove all dead, diseased, and unsightly branches from the shrubs and trees within the medians and replace dead trees and other plantings with approved plant materials.

(h) Inspect and water all planting areas as needed to maintain the plantings in a healthy condition.

(i) Prune and shear shrubs as needed to maintain an attractive, uniform appearance, at a height between twenty-four (24) and thirty (30) inches as measured from the top of the curb.

(j) Notify the Director of Parks and Recreation immediately of any disease, pest, or unusual conditions that might develop in the plantings. Owner shall be responsible for diagnosis and treatment of insects or disease. Restricted use chemicals shall only be applied by licensed certified pesticide applicators.

(k) Employ only trained, qualified employees who shall be subject to the direction of the Owner at all times.

(l) Furnish all equipment and supplies for the maintenance provided under this agreement. Equipment and supplies used by the Owner may be subject to approval by the City.

(m) Dispose of all used chemicals, containers, and supplies in strict accordance with all OSHA, EPA, and other applicable standards and requirements.

(n) Perform maintenance work made necessary by weather conditions, special events, accidents, vandalism, and similar occurrences.

(o) Comply with any restrictions on the use of water during the existence of a water emergency as declared by the Mayor pursuant to Lincoln Municipal Code § 17.26.010.

2. City Contribution

The City agrees to contribute to the cost of the landscaping the sum of — 0 — Dollars (\$ 0. 00) which represents the estimated cost the City would have incurred to landscape the medians. City shall make said contribution payment within thirty (30) days after satisfactory completion of the plantings and receipt of a request for

payment. Request for payment shall be sent to the Director of Public Works and Utilities. The City further agrees to contribute to the maintenance of the landscaping an amount equal to the estimated cost the City would have incurred to maintain the medians if landscaped with the City's standard landscaping materials. City shall make said contribution payment on an annual basis following completion of the fall planting season.

3. Performance

It is understood between the parties that the prime purpose of this Agreement is that the landscaping in the medians be maintained to the satisfaction of the City. The Owner is hereby adjudged to have sufficient professional experience in this field to determine with reasonable certainty the required amount of work and persons required to do such work and the materials necessary to accomplish the stated purpose of this Agreement.

4. Failure to Maintain

In the event Owner fails to maintain the landscaping after receiving 72 hours to perform needed maintenance, the City may do said work and Owner will bear and pay the City for all documented charges incurred by the City pertaining to the cost of maintaining said landscaping and Owner shall, within 30 days from the date of billing, pay to the City such amount.

5. Release and Discharge of Owner's Obligations

A. Owner may be relieved and discharged of this maintenance obligation upon creating in writing a permanent and continuous association of property owners who would be responsible for said permanent and continuous maintenance. The Owner shall not be so relieved of such maintenance obligation until the document or documents creating said

property owners association have been reviewed and approved by the City Attorney and filed of record with the Register of Deeds.

B. Owner may be relieved and discharged of this maintenance obligation upon removal of the enhanced landscaping and replanting the medians with plantings and materials approved by the Directors of Parks and Recreation and Public Works and Utilities that are typical to the City's standard landscaping for medians.

6. Amendment

This Agreement may only be amended or modified in writing signed by the parties to this Agreement.

7. Independent Contractor

The City is interested only in the results obtained under this Agreement and the Owner shall perform as an independent contractor with the sole control of the manner and means of performing the services required under this Agreement. The Owner shall complete this Agreement according to its own means and methods of work which shall be in the exclusive charge and control of the Owner, and which shall not be subject to control or supervision by the City except as to the results of the work. Owner is for all purposes arising out of this Agreement, an independent contractor, and it shall not be deemed an employee of the City. It is expressly understood and agreed that the neither Owner, nor any of its agents or employees, shall be entitled in any manner to benefits to which City employees are entitled including, but not limited to, overtime, any retirement benefits, worker's compensation benefits, and injury leave or other benefits.

8. Equal Employment

(a) The Owner shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, disability, national origin, ancestry, age or marital status pursuant to Lincoln Municipal Code Chapter 11.08 and Neb. Rev. Stat. § 48-1122 et seq.

(b) The Owner shall maintain Fair Labor Standards and shall comply with the Nebraska Unemployment Compensation Act requirements in the performance of this Agreement.

9. Insurance and Hold Harmless

The Owner shall indemnify, defend, and save harmless the City of Lincoln, Nebraska, from and against all losses, claims, damages, and expenses including attorney's fees, arising out of or resulting from the performance of this Agreement that results in bodily injury, sickness, disease, death, or injury to or destruction of tangible property, including the loss of use resulting therefrom that is caused in whole or in part by the Owner, any subcontractor, or any person directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. This section will not require the Owner to indemnify or hold harmless the City of Lincoln for any such damages arising out of or resulting from the sole negligence of the City. The Owner shall not commence work under this Agreement until it has obtained all insurance required under this section and such insurance has been approved by the City Attorney for the City of Lincoln as complying with the terms of this Agreement.

Worker's Compensation Insurance and Employer's Liability Insurance. The Owner shall take out and maintain during the life of this Agreement the statutorily applicable Worker's Compensation Insurance with an insurance company authorized to write such

insurance in this state. The Owner shall take out and maintain during the life of this contract, Employer's Liability Insurance with a standard limit of \$100,000.

Public Liability Insurance. The Owner shall maintain during the life of this Agreement, Public Liability Insurance, naming and protecting Owner and the City of Lincoln, its officials, employees and volunteers as insured, against claims for damages resulting from (i) bodily injury, including wrongful death, (ii) personal injury liability, and (iii) property damage which may arise from operations under this Agreement whether such operations be by Owner or by any subcontractor or anyone directly or indirectly employed by either of them. The minimum acceptable limits of liability to be provided by such insurance shall be as follows:

- A. Bodily Injury and Property Damage \$1,000,000 Each Occurrence
- B. Personal Injury Damage \$1,000,000 Each Occurrence
- C. Contractual Liability \$1,000,000 Each Occurrence
- D. Products Liability and Completed Operations \$1,000,000 Each Occurrence
- E. Personal Injury Liability coverage shall be included.

The Public Liability Insurance required by the preceding paragraph shall include the following extensions of coverage:

- A. The coverage shall be provided under a Commercial General Liability form or similar thereto.
- B. The property damage coverage shall include a Broad Form Property Damage Endorsement or similar thereto
- C. Contractual Liability coverage shall be included.
- D. Products Liability and/or Completed Operations coverage shall be included.
- E. Personal Injury Liability coverage shall be included.

Automobile Liability Insurance. The Owner shall take out and maintain during the life of the contract such Automobile Liability Insurance as shall protect Owner against

claims for damages resulting from bodily injury, including wrongful death, and property damage which may arise from the operations of any owned, hired, or non-owned automobiles used by or for Owner in any capacity in connection with the carrying out of this Agreement. The minimum acceptable limits of liability to be provided by such Automobile Liability Insurance shall be as follows:

Bodily Injury and Property Damage

\$1,000,000 Combined Single Limit

Minimum Scope of Insurance. All Liability Insurance policies shall be written on an "occurrence" basis only. All insurance coverages are to be placed with insurers authorized to do business in the State of Nebraska and must be placed with an insurer that has an A.M. Best's Rating of no less than A:VII unless specific approval has been granted by the City of Lincoln.

Certificate of Insurance. All certificates of insurance shall be filed with the City of Lincoln on the standard ACCORD CERTIFICATE OF INSURANCE form showing the specific limits of insurance coverage required by above and showing the City as an additional insured. Such certificate shall specifically state that insurance policies are to be endorsed to require the insurer to provide the City of Lincoln thirty (30) days notice of cancellation, non-renewal, or any material reduction of insurance coverage.

10. Capacity

The undersigned person representing the Owner does hereby agree and represent that he or she is legally capable to sign this Agreement to lawfully bind the Owner to the terms of this Agreement.

11. Binding Effect

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal representatives, successors and assigns and shall inure and run with the Property.

12. Recordation

This Agreement shall be filed in the Office of the Register of Deeds of Lancaster County, Nebraska at Owner's cost and expense.

IN WITNESS WHEREOF, the Owner and the City do hereby execute this Agreement

CITY OF LINCOLN, NEBRASKA
A Municipal Corporation

By: _____
Coleen Seng, Mayor

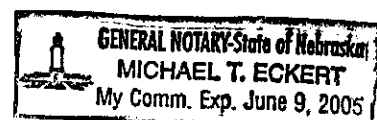
**NORTHRIDGE HEIGHTS PARTNERS,
LLP
NORTHRIDGE PARTNERS IV,
LLP
NORTHRIDGE PARTNERS VI,
LLP**

By: _____
General Partner

STATE OF NEBRASKA)
) ss.
LANCASTER COUNTY)

The foregoing Landscape Maintenance Services Agreement was acknowledged before me on this 8th day of August, 2004, by JOHN F. SCHLEICH, general partner of Northridge Heights Partners, LLP; Northridge Partners IV, LLP; and Northridge Partners VI, LLP, on behalf of said partnerships.

Notary Public



STATE OF NEBRASKA)

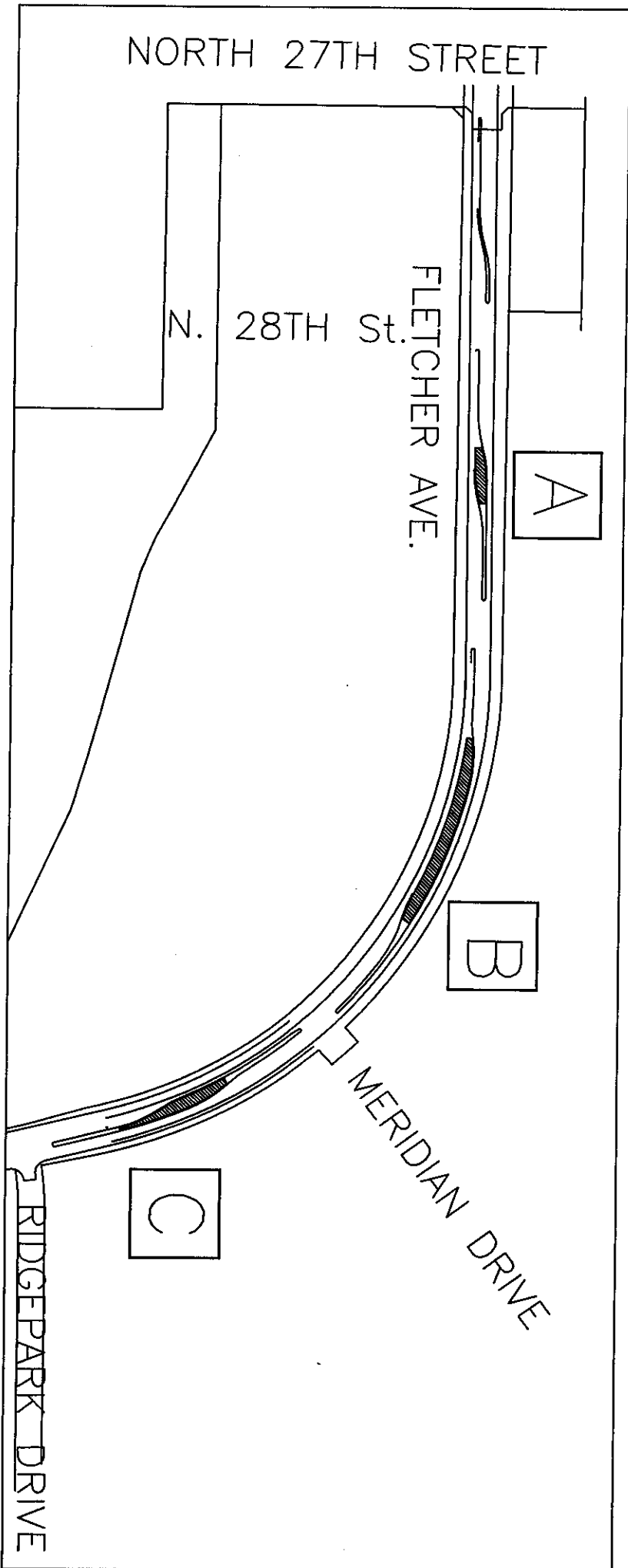
LANCASTER COUNTY) ss.
)

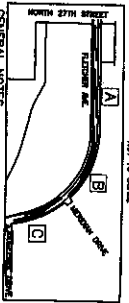
The foregoing Landscape Maintenance Services Agreement was acknowledged before me on this ____ day of _____, 2004, by Coleen Seng, Mayor of the City of Lincoln on behalf of the City.

Notary Public

Attachment "A"

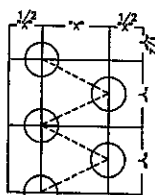
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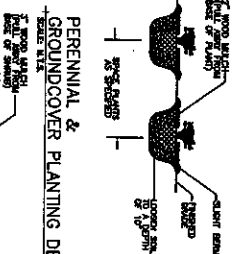


GENERAL NOTES

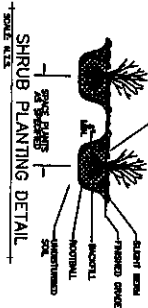
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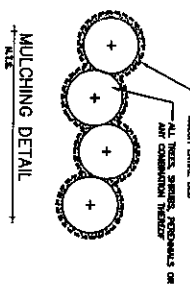
**PERENNIAL &
GROUNDCOVER PLANTING LAYOUT**



PERENNIAL &
GROUNDCOVER PLANTING DETAIL



SHRUB PLANTING DETAIL
SCALE: 1/2" = 1'-0"



MULCHING DETAIL



PLANT SCHEDULE									
BOTANICAL NAME		SIZE OF PLANTING MATERIAL		PLANTING METHOD		NUMBER OF PLANTS		TOTAL	
DET.	COMMON NAME	15-18"	DET.	15-18"	DET.	15-18"	DET.	15-18"	DET.
DECIDUOUS SHRUBS									
SOIL JUNCOS COMPACTA		SHRUBBING		15-18"		DET.		3	
L'ONGUE COMPACTA		SHRUBBING		15-18"		DET.		3	
DOGS		L'ONGUE COMPACTA		15-18"		DET.		3	
PERENNIALS									
P1		WOODS BLUE ASTER		ASTER		WOODS BLUE		ASTER	
P2		WOODS BLUE ASTER		ASTER		WOODS BLUE		ASTER	
P3		WOODS BLUE ASTER		ASTER		WOODS BLUE		ASTER	
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P100		WOODS BLUE ASTER		ASTER		WOODS BLUE		ASTER	

PLANT SCHEMATIC

REVISIONS

[illegible]

LANDSCAPE PLAN

FLETCHER MEDIAN

LINCOLN, NEBRASKA

2004

SHEET
LA01

LA01



OLSSON ASSOCIATES

OLSSON ASSOCIATES
ENGINEERS - PLANNERS - SCIENTISTS - SURVEYORS
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LONDON, ENGLAND 020 7493 8000 FAX 020 7493 8001